

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 11-10469-RGS

LOBSANG CHOEPHEL,
Petitioner,

v.

THOMAS M. HODGSON, SHERIFF OF THE BRISTOL
COUNTY HOUSE OF CORRECTION AND JAIL, ET AL.,
Respondents.

MEMORANDUM AND ORDER

March 21, 2011

STEARNS, D.J.

BACKGROUND

On March 18, 2011, Petitioner Lobsang Choephel ("Choephel"), an immigration detainee at the Bristol County Jail and House of Correction in North Dartmouth, Massachusetts and Jail, filed, through counsel, a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 naming as respondents: (1) Sheriff Thomas M. Hodgson; (2) Superintendent George Vose; (3) Janet Napolitano, Secretary of the U.S. Department of Homeland Security; and (4) Bruce Chadbourne, ICE Field Office Director, U.S. Immigration and Customs Enforcement ("ICE").

Choephel, a Tibetan Buddhist monk born in India to Tibetan refugee parents, alleges that he is subject to a removal order that became final on July 29, 2010, but the ICE is unable to remove him, and his continued detention is in violation of his due process rights as articulated by the Supreme Court in Zadvydas v. Davis, 533 U.S. 678 (2001).

Choephel paid the \$5.00 filing fee for habeas petitions. He also filed a Motion for

an Order to Show Cause Pursuant to 28 U.S.C. § 2243 (Docket No. 2), and an Exhibit in support of the petition (Docket No. 3).

On March 18, 2011, the Clerk's Office erroneously issued summonses in this habeas action.

DISCUSSION

I. The Proper Respondent

In addition to naming Superintendent George Vose as a Respondent, Choephel also names as Respondents Sheriff Hodgson, Secretary Napolitano, and ICE Field Director Chadbourne. The Court will dismiss without prejudice the claims against all Respondents except for Superintendent Vose, who is the "proper respondent" in this action. See Rumsfeld v. Padilla, 542 U.S. 426, 439 (2004) (immediate custodian of petitioner is proper respondent in habeas action).

II. Rescission of Summonses; Service of the Petition; the Motion to Show Cause

As noted above, the Clerk's Office issued summonses in this matter rather than a Service Order. Accordingly, the summonses are RESCINDED, and the Clerk shall serve the petition, as provided below. It is Further Ordered that Choephel's Motion for an Order to Show Cause (Docket No. 2) is ALLOWED to the extent that this court directs a service order to issue and the Respondent to file a response to the habeas petition.

CONCLUSION

Based on the foregoing, it is hereby Ordered that:

1. Superintendent George Vose shall be the sole Respondent in this action and the

Clerk shall correct the docket accordingly;

2. The summonses (Docket No. 4) issued on March 18, 2011, are RESCINDED; petitioner shall not serve the summonses;
3. Petitioner's Motion for an Order to Show Cause (Docket No. 2) is ALLOWED to the extent the petition shall be served and the Respondent shall file a response;
4. The Clerk of this Court shall serve a copy of the petition upon (i) Superintendent George Vose, Bristol County Jail and House of Correction, 400 Faunce Corner Road, North Dartmouth, MA 02727; and (ii) the United States Attorney for the District of Massachusetts;
5. The Respondent shall, within 21 days of receipt of this Order, file an answer or other responsive pleading; and
6. The Respondent shall provide the Court with at least 48 hours advance notice of any scheduled removal of petitioner, and any scheduled transfer of the petitioner out of the jurisdiction.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE